

**IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF TENNESSEE  
NASHVILLE DIVISION**

SCOTT JOHANNESSEN )  
v. Plaintiff, )  
BAC HOME LOANS SERVICING, LP, a ) Case No. 3:13-cv-00296  
limited partnership.; BANK OF AMERICA, )  
N.A., a corporation; and QUALITY LOAN )  
SERVICE CORP., a corporation, )  
Defendants. )  
Judge: Haynes  
Magistrate Judge: Griffin

**OPPOSITION TO APPLICATION TO ENTER DEFAULT**

Bank of America, N.A., successor by merger with BAC Home Loan Servicing, LP, in response to Plaintiff's application to enter default states:

1. Bank of America, N.A. engaged Bradley Arant Boult Cummings to represent it in this pending lawsuit. As noted in undersigned's affidavit, Bank of America, N.A. advised him that it had been served with process on April 9, 2013. Accordingly, based upon that information, the undersigned believed that an answer or other pleading was due on April 30, 2013.

2. Undersigned attempted to contact Mr. Johannessen on April 26, 2013 to discuss this matter and left him a voicemail message asking him to give me a call. I identified myself and that I would be representing Bank of America in this action.

3. On Saturday, April 27, 2013, prior to the expiration of the answer due date, Mr. Johannessen filed an application to enter default against all of the named defendants. At that

time Mr. Johannessen was aware that I was representing the Bank, but he failed to disclose that he intended to seek a default or forward to me a copy of the application.

4. In addition, on Monday, April 29, 2013, undersigned again called Mr. Johannessen's office and left another voicemail message. On Monday night at approximately 8:00 I received a voicemail message from Mr. Johannessen stating that he was out of town and would be back later this week. Again, he did not indicate that he had filed an application to enter a default.

5. On April 30 I filed a notice of appearance, corporate disclosure form for Bank of America and a motion to extend the time to answer. At that time I was unaware that an application for a default had been filed. Upon seeing the docket number on the notice of appearance, I pulled the docket sheet and saw that the application to enter default had been filed on Saturday April 27<sup>th</sup>.

6. The application for default was premature and therefore deficient. It was filed on a Saturday two days before the answer due date. Accordingly, based on the defective application, default should not be entered by the Clerk.

7. Bank of America, N.A. has defenses to the case that it will assert. As noted the various statutes relied upon by do not apply to mortgage loans that are for a commercial or business purpose. In addition, Bank of America intends on filing a motion to dismiss that will more fully set forth the defenses.

8. There is no prejudice to Plaintiff by virtue of Bank of America's failure to respond on April 29. Nor was there any intent to delay these proceedings by not responding sooner.

9. Accordingly, Bank of America asserts that it is defending this case, that Mr. Johannassen was aware that Bank of America had engaged undersigned to represent it in this case. Accordingly, a default should not be entered.

Respectfully submitted,

*/s/H. Frederick Humbracht*  
H. Frederick Humbracht (No. 2993)  
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*Attorneys for Defendant Bank of America, N.A.*

**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing is being served via the Court's ECF system on this the 30<sup>th</sup> day of April, 2013, on:

Scott D. Johannessen  
3200 West End Avenue  
Suite 500  
Nashville, TN 37203

*/s/H. Frederick Humbracht*  
H. Frederick Humbracht